

# **McCAIN Y2K LIABILITY BILL SUMMARY**

## ***AS SENT TO HOUSE, SENATE FOR FINAL APPROVAL***

Following is a summary of Senator John McCain's (R-AZ) Y2K liability bill as sent to the House and Senate for final approval:

- **Requires a 30 Day Notice:** Requires a plaintiff to submit a 30-day notice to the defendant on the plaintiff's intention to sue with a description of the Y2K problem. If the defendant responds with a plan to remediate, then an additional 60 days is allowed to resolve the problem. If the defendant does not agree to fix the problem, the plaintiff can sue on the 31st day.
- **Caps Punitive Damages:** Establishes punitive damage caps of \$250,000 or three times compensatory damages, whichever is less, for small businesses with fewer than 50 employees and for individuals with a net worth of up to \$500,000.
- **Establishes Proportional Liability:** Ensures that defendants pay for the damage they are responsible for. Exceptions include plaintiffs with a modest net worth that aren't able to collect from one or more defendants, (i.e., bankruptcy) in which case the proportion of liability could be doubled or tripled for defendants to ensure that plaintiffs are made whole. Plaintiffs that are individual consumers are always made whole. Defendants who intentionally harmed the plaintiff do not benefit from proportional liability. This section does not apply to contract cases.
- **Preserves Contract Rights:** Does not interfere with parties who have already agreed on Y2K terms and conditions. Clarifies that contract terms can be voided by state law doctrines of unconscionability, including adhesion, existing as of January 1, 1999, in controlling judicial precedent of applicable state law.
- **Confirms the Duty to Mitigate:** Confirms existing law that plaintiffs have to limit damages, and can't collect damages that could have been avoided. New section adds an exception for intentional fraud, and securities claims are exempted.
- **Contains Sunset Provision:** Applies to Y2K failures occurring before January 1, 2003.
- **Permits Certain Class Action Cases to Go to Federal Court:** Allows class action cases to be tried in federal courts if they involve \$10 million in claims or 100 or more plaintiffs.
- **Revises Economic Loss Rule:** Adopts language to allow for economic damages where the defendants committed an intentional tort arising independent of a contract.
- **Encourages Alternative Dispute Resolution.**
- **Preserves State Evidentiary Standards for Claims such as Fraud.**
- **Exempts Municipalities and Governmental Entities from Punitive Damages.**
- **Revises Definition of Y2K Action:** Replaced "harm or injury resulted directly or indirectly" with "harm or injury that arises from or is related to" an actual or potential Y2K failure.
- **Personal Injury and Wrongful Death Claims Not Covered and Not Affected by Bill.**